UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
DOC #:_____
DATE FILED:___12/4/2020___

DEVITO VERDI, INC.,

                Plaintiff,

        -against-

GARDNER-WHITE FURNITURE
COMPANY, INC,

                Defendant.

1:20-cv-1046 (MKV)

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

This case was removed on February 6, 2020 [ECF #1]. The Court extended Defendant's deadline to respond to Plaintiff's complaint, until March 20, 2020, based on the parties' representation that they were attempting to reach a settlement [ECF #10, 14]. However, two months after the deadline, Defendant had not filed an answer, or requested a further extension of time to do so, and Plaintiff had not moved for a default judgment [ECF #15].
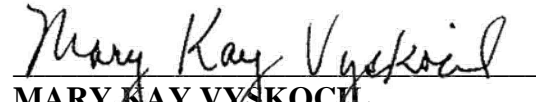
In an Order dated May 21, 2020, the Court directed Plaintiff to file any motion for a default judgment by May 27, 2020 [ECF #15]. The Court stated that failure to move for a default judgment might result in dismissal of this action for failure to prosecute. Nearly five months later, Plaintiff had not filed a motion for default judgment, requested an extension of time to file such a motion, or taken any other action to prosecute this case.

Thus, in an Order dated October 20, 2020, the Court directed Plaintiff to file a letter, by October 26, 2020, showing cause why this case should not be dismissed, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for failure to prosecute [ECF #16]. To date, Plaintiff has neither responded to the Court's Order to Show Cause, nor taken any other action to prosecute its case.

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The Court has considered the factors required by Second Circuit case law for dismissal pursuant to Rule 41(b), and the Court finds that dismissal is warranted. *See Baptiste v. Sommers*, 768 F.3d 212, 217 (2d Cir. 2014). Accordingly, IT IS HEREBY ORDERED that this case is dismissed, with prejudice, for failure to prosecute.

SO ORDERED.

Date: December 4, 2020
New York, NY

Mary Kay Vyskocil

MARY KAY VYSKOCIL
United States District Judge